



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2017-0273

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the operation of the Flagler Memorial (SR A1A) Bridge, mile 1021.8, the Royal Park (SR 704) Bridge, mile 1022.6, and the Southern Boulevard (SR 700/80) Bridge, mile 1024.7, across the Atlantic Intracoastal Waterway, at West Palm Beach, Florida. This modification allows the Flagler Memorial, Royal Park and Southern Boulevard Bridges to operate on alternative schedules when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service visit Mar-a-Lago. The modifications are necessary to accommodate the increase in vehicular traffic when the presidential motorcade is in transit.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2017-0273 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail CWO4 Robert Wooten, Coast Guard Sector Miami, FL, Waterways Management Division, telephone 305-535-4311, email robert.a.wooten@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FL	Florida
FDOT	Florida Department of Transportation
AICW	Atlantic Intracoastal Waterway

II. Background Information and Regulatory History

On August 17, 2017, the Coast Guard published a notice of deviation from drawbridge regulation with request for comments in the Federal Register (82 FR 39019) to test proposed changes. Three comments were received. Due to delays in processing this proposed regulatory change, on March 6, 2018, the Coast Guard published a notice of deviation from regulations with request for comments extension in the Federal Register (82 FR 9431) to allow for additional time for the public to

comment. One comment was received. On May 21, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Palm Beach, FL in the Federal Register (83 FR 23398). No comments were received. Due to delays in processing this regulatory change, on June 25, 2018, the Coast Guard published a notice of deviation from regulations with request for comments extension in the Federal Register (83 FR 29438) to allow additional time for public comment and to evaluate the changes to the operating schedules with the establishment of the Presidential Security Zone (82 FR 17295). No comments were received.

We are issuing rule under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The notice of deviation published in the Federal Register (83 FR 29438) expires on August 29, 2018 and this rule must be in effect immediately thereafter.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Flagler Memorial (SR A1A) Bridge, mile 1021.8, across the AICW (Lake Worth Lagoon) at West Palm Beach, Florida is a double-leaf bascule bridge that has a vertical clearance of 22 feet at mean high water in the closed position. The Royal Park (SR 704) Bridge, mile 1022.6, across the AICW (Lake Worth Lagoon) at West Palm Beach, Florida is a double-leaf bascule bridge that has a vertical clearance of 21 feet at mean high water in the closed position. The Southern Boulevard (SR 700/80) Bridge, mile 1024.7, across

the AICW (Lake Worth Lagoon) at West Palm Beach, Florida is under construction, a temporary lift bridge is in place that has a vertical clearance of 14 feet at mean high water in the closed position and a 65 foot vertical clearance in the open position. The existing regulations are published in 33 CFR §117.261(u), Flagler Memorial Bridge, §117.261(v) Royal Park Bridge, and §117.261(w) Southern Boulevard Bridge.

The bridge owner, Florida Department of Transportation, requested changes to the drawbridge operating schedules to better facilitate orderly vehicle traffic flow across the Flagler Memorial, Royal Park and Southern Boulevard bridges when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service visit Mar-a-Lago. The increase in traffic congestion occurs when the Presidential Security Zone (82 FR 17295) is enforced which closes the Southern Boulevard Bridge when the presidential motorcade is in transit. This action requires through traffic to use the Flagler Memorial and Royal Park Bridges.

IV. Discussion of Comments, Changes and the Final Rule

As noted above, we received four comments total on the two notices of deviation published on August 17, 2017 and March 6, 2018, respectively. Of the four comments received, one was a political statement with no relevance on the proposed regulation. Three of the four comments received were in favor of the regulation. Two of the comments in favor of the regulation suggested the changes be made permanent regardless of presidential visits. The Coast Guard has considered this recommendation, however, making the modified operating schedule permanent would place an unreasonable burden on navigation and potentially have a negative impact on safe

navigation. The modified schedule is only in effect when uninterrupted transit of dignitaries are crossing the Southern Boulevard Bridge. While vessels may have to wait up to an hour, it is only during the weekdays and for a short period.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels able to pass through the Flagler Memorial and Royal Park Bridges in the closed position may do so at any time. The bridges will be able to open for emergencies. The Southern Boulevard Bridge will be under the control of the on-scene designated representative when the Presidential Security Zone is enforced.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section

to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend §117.261 by revising paragraphs (u), (v), and (w) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(u) *Flagler Memorial (SR A1A) Bridge, mile 1021.8, at West Palm Beach.* (1) The draw shall open on the quarter and three-quarter hour.

(2) When the security zone is enforced, the draw is allowed to remain closed to navigation from 2:15 p.m. to 5:30 p.m. with the exception of a once an hour opening at 2:15 p.m., 3:15 p.m., 4:15 p.m. and 5:15 p.m., weekdays only, if vessels are requesting an opening. At all other times the draw shall open on the quarter and three-quarter hour.

(v) *Royal Park (SR 704) Bridge, mile 1022.6, at West Palm Beach.* (1) The draw shall open on the hour and half-hour.

(2) When the security zone is enforced, the draw is allowed to remain closed to navigation from 2:15 p.m. to 5:30 p.m. with the exception of a once an hour opening at 2:30 p.m., 3:30 p.m., 4:30 p.m. and 5:30 p.m., weekdays only, if vessels are requesting an opening. At all other times the draw shall open on the hour and half-hour.

(w) *Southern Boulevard (SR 700/80) Bridge, mile 1024.7, at West Palm Beach.* (1)

The draw shall open on the quarter and three-quarter hour.

(2) When the security zone is enforced, the draw may be closed without advance notice to permit uninterrupted transit of dignitaries across the bridge. At all other times the bridge shall open on the quarter and three-quarter hour, or as directed by the on-scene designated representative.

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Dated: August 31, 2018

James A. Passarelli
Captain, U.S. Coast Guard
Commander, Seventh Coast Guard District
Acting
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